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**ADMINISTRATIVE LAW
SUPPLEMENTAL MATERIALS**

VOLUME 3

LORNE SOSSIN

**FACULTY OF LAW
UNIVERSITY OF TORONTO
2005**

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ADMINISTRATIVE LAW SECOND SEMESTER 2005

Professor Lorne Sossin

Office Hours: **Professor Lorne Sossin:**
 Rm. 201b, Falconer Hall
 Fridays 2-4pm
 or by appointment (416-978-5443); and
 by email: lorne.sossin@utoronto.ca

Class Meetings: **Tuesdays and Thursdays, 8:45am-10:30am**

Overview

This course is an introductory course examining administrative law - which covers the legal regulation and judicial supervision over the executive branch of government. The courts have developed a distinctive jurisprudence governing the manner in which government officials carry out their statutory mandates and exercise discretion under those statutes. This body of law is of general application to the judicial review of the actions of government officials and thus is relevant and important to many other substantive areas of law, including labour law, immigration law, constitutional law, environmental law, banking and securities law and many others.

Texts

The text required for this course is D. Mullan, *Administrative Law* (Toronto: Irwin, 2001) and, Sossin, *Administrative Law, Fall 2004 Supplemental Materials (Volume I, II and III)*.

Recommended Reading

For those seeking additional readings, the following sources are recommended:

- Brown and Evans, *Judicial Review of Administrative Action* (Brown & Evans, 1998) (Canada) (Looseleaf ed.)
- Mullan et al. (eds.), *Administrative Law: Cases, Text and Materials* 5th ed. (Toronto: Emond Montgomery, 2003)
- MaCaulay & Sprague, *Practice and Procedure before Tribunals* (Toronto: Carswell, 1988) (Looseleaf ed.)
- Blake, *Administrative Law in Canada*, (3rd ed. Butterworths, 2001) (Canada)
- Bryant & Sossin, *Public Law* (Toronto: Carswell, 2002)
- Davis & Pierce, *Administrative Law Treatise* (3rd ed. Little Brown 1994) (U.S.)

Evaluation

There will be a final, open-book examination of 3 hours duration. Students may also elect to write a paper on a topic submitted to and approved by me before the end of the first week of March 2003. This will be an *additional* form of evaluation and will constitute 50% of a student's grade - the other 50% of the grade will be based on the grade in the final examination. Papers should be 18-20 double-spaced pages. This is a "no-downside" option, so that if a student receives a grade on the paper less than that student receives on the exam, it will not count towards the student's final grade. Similarly, students may also elect to undertake a practicum with Downtown Legal Services (DLS) in which they take on at least 2 files involving cases before administrative tribunals supervised by a DLS lawyer and write up a short paper (10 double-spaced pages) on the insights this experience shed on the issues covered in the class. This is also a "no-downside" option and an *additional* form of evaluation to the exam and also will be worth 50% of a student's grade.

Course Outline

All page references are to D. Mullan, *Administrative Law* (AL) or to the 2003 Supplemental Materials, Volume One (SP1), Volume Two (SP2) and Volume Three (SP3).

Part I: Introduction

This will offer an introduction to the functions and institutions of government in Canada, and emphasize the constitutional, statutory and common law separation of powers between the judicial, legislative and executive branch. With respect to the executive branch, we will explore the growth of administrative agencies, boards, commissions, tribunals and other government decision-makers that make up the administrative state.

Reading:

AL, 3-28; "The Administrative State and the Rule of Law" in Mullan et al. (eds.), *Administrative Law: Cases, Text and Materials* 5th ed., SP1 pp.1-18; *Baker v. Canada (Minister of Citizenship & Immigration)*, SP1 pp.19-43

Part II: Administrative Procedures and the Duty of Fairness

(i) Introduction

The purpose and legal sources of administrative procedures; historical overview; the roles of legislatures, agencies and courts in designing procedures.

Reading:

AL, pp.147-55

(ii) Duty of Fairness

- (a) historical overview
Reading: Mullan (ed.), Administrative Law: Cases and Materials (5th ed.), SP1 pp. 44-47; Cooper v. Board of Works for Wandsworth District, SP1 pp. 48-49
- (b) the emergence and elaboration of the duty of fairness: *Nicholson & Knight*
Reading: AL, pp. 156-70; Nicholson, SP1 pp.49-54; Knight, SP1 pp. 54-61
- (c) limitations on the scope of the duty: legislative and policy decisions
Reading: Inuit Tapirisat, SP1 pp.62-65; Homex Realty, SP1 pp.66-67; Authorson v. Canada, SP1 pp. 68-79, Wells v. Newfoundland, SP1 pp. 80-94; G. Cartier, "Procedural Fairness in Legislative Functions", SP1 pp. 95-97; D. Mullan, "The Role of the Judiciary in the Review of Administrative Policy Decisions: Issues of Legality", SP1, pp.98-115; East York v. Ontario, SP1 pp.116-130
- (d) interests protected by the duty of fairness
Reading: Re Webb and Ontario Housing Corporation, SP1 pp.131-133; Hutfield v. Board of Fort Saskatchewan General Hospital, District No.98, SP1 pp. 134-136; Mullan and Ceddia, "Globalization, Democracy and Domestic Law: The Impact on Public Law of Privatization, Outsourcing and Downsizing – A Canadian Perspective, SP1 pp.137-156
- (e) administrative action that is non-final: recommendations and decisions to prosecute
Mullan (ed.), Administrative Law: Cases and Materials (5th ed.), SP1 pp. 157-158, Re Abel and Advisory Review Board, SP1 pp. 159-161
- (f) legitimate expectations
Reading: AL, pp.177-86; Baker SP1, pp.31-32; CUPE v. Ontario (MOL) SP3, pp. 299-302

(iii) Constitutional Thresholds: Section 2(e) of the *Bill of Rights* & Section 7 of the *Charter*

- (a) *Reading: AL, pp.187-213; Singh v. Canada (Minister of Employment and Immigration), SP1 pp. 162-197; Blencoe v. B.C. (Human Rights Commission), SP1 pp. 198-202, 211-227; L. Sossin, "The Quasi-Revival of the Canadian Bill of Rights and its Implications for Administrative Law" SP1 pp. 246-267*

(iv) The Content of Procedural Fairness

- (a) introduction and analytical framework
Reading: AL, pp.171-76; Baker v. Canada (Minister of Citizenship & Immigration), SP1 pp.29-31; Suresh v. Canada (Minister of Citizenship & Immigration), SP1, pp. 268-299, Ahani v. Canada (Minister of Citizenship & Immigration) SP1 pp.300-306
- (b) *Statutory Powers Procedure Act* and other general procedural codes
Reading: AL, pp. 214-26, Amended SPPA, SP1 pp.307-331
- (c) delay
Blencoe v. B.C. (Human Rights Commission), SP1 pp. 205-210, 227-245,
- (d) oral hearings
Reading: AL, pp.244-62; Khan v. University of Ottawa, SP1 pp.332-359
- (e) the right to counsel
Reading: AL, pp.262-64, New Brunswick (Minister of Health and Community Services) v. G. (J.). SP1 pp.360-91; R. v. Peterman, SP2 pp.1-11
- (f) disclosure
Reading: AL, 238-44; Pritchard v. Ontario (Human Rights Commission), SP2 pp.12-20; Haghighi v. Canada (Minister of Citizenship and Immigration), SP2 pp.21-33
- (g) evidence and cross-examination
Reading: AL, pp.287-90
- (h) the duty to provide reasons for decisions
Reading: AL, pp. 306-18; Baker SP1 pp. 33-35, Liang v. Canada (Minister of Citizenship & Immigration, SP2 pp. 34-40; Gray v. Ontario (DSP), SP2 pp.41-57; R. v. Sheppard, SP2 pp.58-76
- (i) the relevance of international human rights norms and procedural requirements
Reading: Baker SP1 pp. 40-41; Ahani v. Canada (OCA), SP2 pp. 77-110; G. Heckman, "International Law and Procedural Safeguards in Deportation Proceedings" SP2 pp. 111-162; Dyzenhaus, Hunt & Taggart, "The Principle of Legality in Administrative Law: Internationalisation as Constitutionlisation"
www.law.utoronto.ca/faculty/sossin

(v) Bias & Independence

- (a) impartiality and independence
Reading: AL, 321-48; 2747-3174 Quebec Inc. v. Quebec (Régie des permis

d'alcool), SP2 pp.163-187; *Ellis Don v. Ontario (Labour Relations Board)*, SP2 pp.188-215; *Newfoundland Telephone Comp. v. Newfoundland (Board of Utility Commissioners)*, SP2 pp. 216-227; *Imperial Oil v. Quebec (Minister of the Environment)*, SP2 pp. 228-244; *Bell v. Canadian Telephone Employees Association*, SP2 pp. 245-58, *Canadian Pacific Ltd. v. Matsqui*, SP2 pp.259-303; *Ocean Port v. B.C.*, SP2 pp.304-315; *Gale v. Miracle Food Mart*, SP2 pp.316-22

Part III: Standard of Review

(i) Introduction

Reading: AL, pp.49-81; Mullan (ed.), *Administrative Law: Cases and Materials* (5th ed.), SP2 pp. 323-326; *Law Society of New Brunswick v. Ryan*, SP2 pp. 327-340; *CUPE v. City of Toronto* SP2 pp. 352-375; D. Mullan, "Establishing the Standard of Review: The Struggle for Complexity" SP2 pp. 376-395; M. Jimenez, "Refugee Approval Rates Vary Widely" SP2 pp. 396-398; F. Houle & L. Sossin, "Tribunals and Policy-Making" SP2 pp. 399-445

(ii) The Pragmatic and Functional Approach

Introduction

Reading: *Dr. Q. v. College of Physicians and Surgeons of BC*, SP2 pp. 341-351

(a) the standard of patent unreasonableness

Reading: *CUPE v. New Brunswick Liquor Corp*, SP3 pp. 1-16, *National Corngrowers v. Canada*, SP3 pp. 17-49

(b) the standard of review: correctness

Reading: *Canada v. Mossop*, SP3 pp.50-54; *Pushpanathan v. Canada (Min. Of Citizenship & Immigration)*, SP3 pp.55-99, *Trinity Western College v. B.C. College of Teachers*, SP3 pp. 100-141

(c) the standard of reasonableness simpliciter

Reading: *Barrie v. CTEA*, SP3 pp.142-172, *Canada (Dir. of Investigation and Research) v. Southam Inc.*, SP3 pp. 173-193, *Chamberlain v. Surrey School District No. 36*, SP3 pp. 194-220; *Voice Construction v. General Workers' Union, Local 92* SP3 pp.221-230

(iii) The Dilemma of Discretion

(a) the *ultra vires* principle

Reading: AL pp.100-22, *Shell v. Vancouver (City)*, SP3 pp.231-259, *Baker* SP1

pp. 36-42, *Nanaimo (City) v. Rascal Trucking Ltd.*, SP3 pp.260-268, *Suresh v. Canada*, SP1 pp.278-281, *CUPE v. (Ontario) MOL*, SP3 pp.269-311

- (b) The new statutory approach
Reading: BC Administrative Tribunals Act, 2004, SP3 Appendix A
- (c) discretion and the *Charter*: unreasonableness revisited
Reading: AL pp. 122-30, Little Sisters v. Canada, SP3 pp. 312-317; L. Sossin, “Discretion Unbound: Reconciling Soft Law and the *Charter*” - www.law.utoronto.ca/faculty/sossin; *Dassonville-Trudel v. Halifax*, SP3 pp. 318-332; S. Choudhry & K. Roach, “Racial and Ethnic Profiling: Statutory Discretion, Constitutional Remedies and Democratic Accountability” SP3 pp. 333-347
- (d) impact of judicial review and rules on discretion: Soft law & Rulemaking
Reading: Mullan et al. (eds.), Administrative Law: Cases, Text and Materials 5th ed., “Rulemaking”, SP3 pp. 446-457; L. Sossin, “The Rule of Policy: Baker and the Impact of Judicial Review of Administrative Discretion” SP3 pp. 432-445
- (e) Beyond Soft Law: L. Sossin, “Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields and Discretionary Justice in Social Welfare” – www.law.utoronto.ca/faculty/sossin

Part IV: Jurisdiction, Justiciability and Standing

- (a) a tribunal’s authority to decide constitutional questions
Reading: AL, pp.352-67; Cooper v. Canada (Human Rights Commission), SP3 pp.348-377; *Paul v. B.C (Forest Appeals Commission)*. SP3 pp.378-394; *Nova Scotia (Worker’s Compensation Board) v. Martin*, SP3 pp. 395-431
- (b) standing
Reading: AL 445-59, Harris v. Canada, SP3 pp. 458-481; L. Jacobs and T. Kuttner, “Discovering What Tribunals Do: Tribunal Standing Before the Courts” SP3 pp. 482-511; *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* SP3 pp.562-586
- (c) justiciability
Reading: L. Sossin, The Law of Justiciability in Canada (Carswell, 1999), SP3 pp.512-526
- (d) doctrine of exhaustion and collateral attacks
Reading: AL, 465-70; R. v. Consolidated Maybrun Mines Ltd., SP3 pp. 527-542; *Danyluk v. Ainsworth Technologies Inc.* SP3 pp. 543-562

Part V: Remedies**(a) An Overview**

Reading: AL, pp.401-23, 504-22

